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C O N F I D E N T I A L MANILA 005000

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E.O. 12958: DECL: 12/14/2016

TAGS: PREL CASC MARR RP

SUBJECT: MARINE CASE: REGAINING CUSTODY OF LCPL SMITH

REF: A. STATE 198798

1B. MANILA 4986

Classified By: Ambassador Kristie A. Kenney, reasons 1.4 (b) and (d)

11. (C) Ambassador shared ref a concerns and possible options with Executive Secretary Ermita and Foreign Secretary Romulo on December 14, while other country team members flagged to counterparts at the Departments of Foreign Affairs and National Defense as well as at the Armed Forces of the Philippines. Ermita said that President Arroyo had vowed that "we must not fail" in successfully resolving the custody issue in accordance with the Visiting Forces Agreement, and had "ordered" the entire Cabinet to fix this problem. Romulo expressed frustration at the judge's ruling and was not surprised to hear we were looking at canceling certain military activities absent a satisfactory resolution. Ambassador told Romulo that Washington would also be discussing this with Philippine Ambassador Gaa. Romulo said that Gaa had been very impressed that President Bush had raised this issue during the credentials ceremony. Romulo said that he wanted to reiterate how "strong and solid" the Philippine Executive Branch was on this issue. He said his team would file all necessary documents to support a rapid and favorable appeal. All other interlocutors also expressed understanding of the gravity of the situation but expressed confidence about a forthcoming satisfactory resolution of the custody issue.

12. (U) Defense attorneys early on December 14 filed a motion to the Court of Appeals contesting Makati City Regional Trial Court Judge Pozon's December 13 ruling against U.S. custody (ref b) and requesting immediate action to return Lance Corporal Smith to U.S. custody. The Philippine Solicitor General, with extensive input from and on behalf of the Department of Foreign Affairs, is finalizing a similar motion in support, which he plans to file on December 15. As of COB, the Appeals Court had not made any ruling.

13. (U) Senior Philippine officials are taking a more pro-active and helpful public line. Justice Secretary Gonzalez said that Judge Pozon "was wrong" to rule as he did and confirmed the right of U.S. custody. He promised the Philippine Government would intervene with the Appeals Court in order to uphold its international obligations, as soon as the defense team had filed a motion. He also told the media that President Bush had raised the VFA issue with Philippine Ambassador Gaa during the latter's presentation of credentials. DFA spokesman Malaya reiterated that the VFA was very clear that custody of Smith should belong to the U.S. during judicial proceedings.

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KENNEY